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August 10, 2012

E-Mail and First-Class Mail

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Dear Members of the Meagrt Forms Committee:

Re: Comment Regarding Proposed Change to MC 19

On behalf of the Michigan Court Officers and Deputy Sheriffs Association ("MCODSA"), as its counsel, MCODSA comments on the proposed modifications to MC 19 and requests as follows:

1. The proposed modification to paragraph 1 of MC 19 incorrectly states: "Personal property jointly owned with a non-defendant may not be taken and sold." Michigan law clearly permits seizure of personal property jointly owned by the judgment debtor and a non-defendant, subject only to the non-defendant's ability to demonstrate a right of survivorship created by express act. *See* MCL 600.6017 and 600.6023; *People v Kingsbury*, No. 201854 (unpublished), 1998 Mich App Lexis 2070 (Mich Ct App Aug. 7, 1998); *Scholten v Scholten*, 238 Mich 679 (1927). Accordingly, MCODSA requests that the Committee reject the proposed addition to paragraph 1.
2. The proposed modification to paragraph 6 would prohibit seizure of property "until 20 days after the effective date of this order." The proposed change appears to reflect a misunderstanding of MCL 600.6002(2), which requires that the Court Officer wait 20 days until after the effective date of the order to make his or her "return," which we understand to have the purpose of motivating a thoughtful, orderly process. We know of no basis in law for the proposed 20 day delay for seizure. Indeed such a delay would circumvent the judgment creditor's rights under MCL 600.6032, pursuant to which "all personal property" of the judgment debtor is subject to

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seizure (subject, of course, to the expiration of the 21 day appeal period imposed by MCR 2.614(A)(1) and MCR 7.101(H)(1)(a)). Notably, one asset clearly subject to execution under MCL 600.6032, cash, would surely disappear during the 20 day wait. Further, the proposed delay would expose the Court Officer to potential liability where personal property known to the officer is concealed or disposed of while the officer is prohibited from seizing the same for 20 days. *See Beard v Clippert*, 63 Mich 716 (1886). The proposed 20 day delay should be rejected by the Committee, as this change is contrary to law and would promote concealment, extra-judicial disposition of property, and conflict.

3. The proposed revision to paragraph 4 of the Order does not comport with MCR 3.106(G)(5), which provides for deposit of money received in a trust account *or payment of money received to the court*. We request that any revision of paragraph 4 of the Order clearly permit the option of payment to the court.
4. While in the process of considering the above referenced proposed revisions to MC 19, MCODSA respectfully requests that the Committee consider the following:
 - a. The Order portion of MC 19 begins with the introductory phrase "To Any Sheriff, Deputy Sheriff, or Court Officer." MCODSA is aware of numerous instances where this broad phrase is relied on to perpetrate a practice which is not supported by law and leads to abuses within the execution process, namely Deputy Sheriffs and Court Officers exceeding their jurisdiction. For example, if a Deputy Sheriff of Wayne County leaves his county and enters another county, relying on the phrase "TO ANY . . . DEPUTY SHERIFF," he is acting outside of the scope of his authority. "At common law, a sheriff has no jurisdiction beyond the borders of his county, the rule being that the acts of an officer outside of his county . . . are unofficial and necessarily void unless expressly or impliedly authorized by some statute." *Kapson v Kubath*, 165 F Supp 542, 546 (WD Mich 1958) (citation omitted). A sheriff who seizes property outside of the territory over which he or she has authority "is to be regarded as though he or she were a stranger having no writ, and liable in trespass to the owner." CJS, Sheriff and Constable § 147. *See also* 1979-1980 Mich Op Attorney General 962, *4-5. The jurisdiction or authority of a Court Officer is similarly limited; "a court officer's authority extends only to matters that are directly related to the judicial district that appointed him." *Menken v 31st District Court*, 179 Mich App 379, 382 (1989). We suspect that the author(s) of the proposed revision to paragraph 2 of MC 19, referencing "the area you are elected/appointed to serve," also seek to keep Sheriffs, their appointed Deputies, and Court Officers from exceeding their jurisdiction. Where MCODSA is aware of many instances where persons who exceed their jurisdiction attempt to justify their actions by relying on the broad, introductory language of the Order, MCODSA proposes changing that language to read: "To Any Sheriff or Deputy Sheriff of *This County* or Court Officer of *This Court*."

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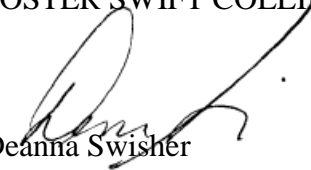
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- b. MC 19 includes a line directly below the Judge's signature line which states in part "Order to be served by: _____. " MCODSA is aware of many situations where the attorney requesting issuance of the Order completes the referenced blank by identifying a person who is not authorized to act (i.e., by appointment as a Court Officer or appointment as a Deputy Sheriff) in the county of the court that is issuing the Order nor the county where the debtor's property is believed to be located. Further, where this and other language appears below the Judge's signature, and where such other language does not purport to be part of the court's "Order," MCODSA does not understand any information added to the referenced blank to be a part of the Order and, as a result, does not effectuate an "appointment" to act as an officer of the issuing court. MCODSA respectfully requests that this provision ("Order to be served by: _____. ") be deleted, particularly where a person named in this fashion has not been appointed and therefore would not have posted bond in accord with MCR 3.106(D) and where other means are readily available to the courts and judgment creditors (i.e., by ex parte motion and order) if they wish to appoint a person, other than the person(s) previously appointed by the court or Sheriff, to serve the writ.

I would be pleased to have the opportunity to respond to any questions regarding the above matters or otherwise assist the Committee. Please contact me if I may answer any questions or if I may be present when the Committee meets to consider the proposed changes to MC 19. In addition to my role as counsel to MCODSA, I have collected judgments in Michigan for over 20 years and, therefore, also offer the perspective of counsel for judgment creditors.

Sincerely,

FOSTER SWIFT COLLINS & SMITH PC



Deanna Swisher

DS:JRP

cc: Michigan Court Officers and Deputy Sheriffs Association